very nature of our institutions, Americans, in founding the new States of the West, carried with them the fundamental safeguards and customs of Anglo-Saxon liberty. At that time, then, there was no reason in policy for drawing a line between States and Territories; there was every reason in sentiment and policy against doing so. None of these considerations apply to the question as it came up in 1900 in regard to our new possessions. Instead of contiguous territory settled by Americans we are dealing with alien races and tropical islands, whose acquisition was no more contemplated in 1856 than it was in 1789. The prevailing view seems to be that in dealing with the peculiar problems they present it is for the interest of all concerned that the power of the nation should be commensurate with its responsibility; that the rigid application of the limitations of the Constitution might work serious harm.

Natural as it may be that the Court should seek to give effect to this view and reject the doctrine of the last two generations there have stood in the way the *dicta* and even the *ratio decidendi* of several cases. *Loughborough* v. *Blake* (1870) 5 Wheat. 317; *Dred Scott* v. *Sandford* (1856) 19 How. 393; *Callan* v. *Wilson* (1887) 127 U. S. 540; *Springville* v. *Thomas* (1896) 166 U. S. 707. Curiously enough, however, there is no case setting forth the doctrine that the limitations of the Constitution are applicable of their own force to territory that comes within our sovereignty, in which the actual result could not have been correctly reached on other grounds. As has been said, the wording of the Constitution does not stand in the way of these Insular Cases; nor does the interpretation of the framers so far as it can be gathered from their practice. The first ten amendments were adopted to quiet the fears of certain states. Their applicability to the Western territory was not debated by the Congress that framed them, for the reason, perhaps, that practically all of this territory was already protected by the similar guaranties of the Northwest Ordinance, which was regarded as fundamental law. The guaranties of this ordinance, except in regard to slavery, were extended to the territory ceded by North Carolina, to the Mississippi Territory, and later to the Louisiana Territory. Why should this have been done if it had been believed that the amendments applied of their own force? Further, the first legislation for Louisiana was inconsistent with these amendments. It would seem then that the result now reached by the court accords with the practice, at any rate, of the generation that framed the Constitution. The decisions are expressive, however, of a new spirit, of a hesitancy to tie the hands of the Nation in its national enterprises, present and future. They illustrate anew that singular flexibility of our Constitutional Law which permits successive generations to put into effect their own ideals of national policy without formal change in the fundamental law.

RELATION OF STOCKHOLDERS TO A VOTING TRUST.—It does not violate any rule of law for stockholders who own a majority of the stock of a corporation to combine their stock into a pool or into a voting trust and thereby govern the organization and direct the policy of the corporation. Cook, Corporations, sec. 622. *Smith* v. *S. F.*

and N. P. Ry. Co. (1897) 115 Cal. 584. But such a plan must have for its object the best interests of the corporation. In determining in any particular case the validity of a voting trust, that is, of an agreement whereby the legal title of the stock together with the right to vote thereon has been transferred to a trustee while the stockholder has retained only an equitable interest, one of two questions will arise: first, what right, if any, has a stockholder who was not a party to the trust to enjoin the trustee from voting on the stock? or second, can a stockholder who has transferred his stock under the trust agreement or a purchaser of his equitable interest revoke the transfer and vote the stock himself? A recent decision in New Jersey is interesting in that each question arose and each was decided in favor of the complainant. The reorganization committee of an insolvent corporation, appointed by a majority of the stockholders, who were citizens of Great Britain, sent to such stockholders a circular, which suggested the formation of a voting trust but did not indicate what powers it was intended to give the trustee nor the duration of the trust. On receiving the consents, the committee conveyed their shares, the legal title to which they still held, to a holding corporation; the conveyance provided that the trust should endure fifty years, and gave the trustee absolute power to vote the shares as it should see fit, revocable only by three fourths of the pooling stockholders. The trust agreement was without consideration. *Warren* v. *Pim* (N. J. 1903) 55 Atl. 66. The early cases held that a stockholder could not delegate the right of voting on his stock to a proxy unless express provision to that effect had been made in the charter. These decisions seem to have been based on the principle of the common law, that, where discretionary power of any kind is granted to men, the law requires them to make a personal exercise of that discretion. "Potestas delegata non potest delegari" is the maxim applied. *Phillips* v. *Wickham* (1829) 1 Paige's Ch. R. 590, at p. 598. *Taylor* v. *Griswold* (1834) 14 N. J. Law *222*. The later cases propose a different theory, namely, that every stockholder is entitled to the benefit of the judgment of every other stockholder in the management of the affairs of the corporation. *Shepaug Voting Trust Cases* (1891) 60 Conn. 553. *White* v. *Thomas Tire Co.* (1893) 52 N. J. Eq. 178. Except in particular cases, the court will not enjoin the carrying out of a voting trust at the instance of a stockholder who is not a party thereto. If the purpose of the pool or trust is to secure to the majority stockholders or to one of their number, advantages not participated in by the minority, or if the result of the trust would be to transfer the control of the policy of the corporation to persons having no beneficial interest in the corporation, or even if the agreement aims to control the corporation for a long period of years by a method of self-perpetuation, in a suit brought by one of the minority stockholders, the court will declare the trust void. *Fuller* v. *Dame* (1836) 35 Mass. 472. *Kreissl* v. *Distilling Co. of Am.* (1900) 61 N. J. Eq. 5.

The right of a non-participating stockholder to interfere depends generally on the validity of the agreement, that is, on the legality of its purpose and result. On the other hand, the stockholder who has been a party to the trust or pooling agreement and later seeks to withdraw and revoke his proxy may attack also the sufficiency of the

agreement. Where the only consideration was the mutual promises of the several stockholders, it has been held that any stockholder may revoke his consent and withdraw his stock at will. *Fisher* v. *Bush*, (1885) 35 Hun, 641. He may also revoke where he was forced into the trust by a threat as in the case at bar. The courts treat a voting trust as a power of attorney to vote. Therefore if the power has been coupled with an interest the court will not permit either a stockholder who was a party to the trust or a purchaser from him to revoke the power. *Hey* v. *Dolphin* (1895) 92 Hun 230; *Smith* v. *S. F. & N. R. Ry. Co.*, *supra*; *Chapman* v. *Bates* (1900) 61 N. J. Eq. 658. As stated by the court in *Mobile & O. R. R. Co.* v. *Nicholas* (1892) 98 Ala. 92, "In every case in determining the validity of an agreement which provides for the vesting of the voting power in a person other than the stockholder, regard should be had to the condition of the parties, the purpose to be accomplished, the consideration of the undertaking, interests which have been surrendered, rights acquired and consequences to result."

"ACT OF GOD" AS A LIMITATION ON THE LIABILITY OF A COMMON CARRIER.—The liability of an insurer of goods was early imposed on common carriers on grounds of public policy. It was natural, however, for the courts to seek to mitigate this rule where the loss occurred under such circumstances as to negative negligence or fraud. Exemption might have been given whenever the carrier, by disproving negligence on the part of himself or others, could show loss by inevitable accident, and there has been some support for such a position. *Walpole* v. *Bridges* (Ind. 1839) 5 Blackford 222. By holding a carrier liable for loss by a fire not started by any violent act of nature such as lightning, Lord Mansfield, in 1785, established a much narrower rule of exemption. *Forward* v. *Pittard* (1785) 1 T. R. 29. Under this "Act of God" test, as analyzed by Lord Cockburn in *Nugent* v. *Smith* (1875) L. R. 1 C. P. D. 19, the carrier's liability should be relaxed only in those cases of inevitable accident where the loss was occasioned by a sudden, violent and irresistible act of nature which, by the exercise of reasonable care, could not have been foreseen or guarded against. South Carolina has properly broadened the rule to include passive as well as active natural causes. *Smyrl* v. *Niolon* (S. C. 1831) 2 Bailey 421.

Lord Mansfield and Lord Cockburn, in giving their definition, both intimated that, for a loss to be by the "Act of God," human agency must not contribute to it, and this statement has been constantly reiterated by both English and American courts. In the light of the facts of the cases it may well have been that all that was originally meant was that the sudden act of nature must be the proximate legal cause. Such, at least, should have been its meaning unless the exemption, already narrowed much within its logical limits, was to be still further contracted. Such seems to have been its interpretation in Pennsylvania and Colorado. *Penn. R. R. Co.* v. *Fries* (1878) 87 Penn. St. 234; *Blythe* v. *Denver & R. G. R. R. Co.* (1890) 15 Col. 333. As a rule, however, the courts have put on the expression an